

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ARTHUR D'AMARIO, III	:	CIVIL ACTION
Petitioner,	:	
vs.	:	
	:	
JOSEPH V. SMITH (Warden, FDC);	:	NO. 02-2656
UNITED STATES ATTORNEY FOR	:	
ED OF PA; and, ATTORNEY	:	
GENERAL OF PENNSYLVANIA	:	
Respondents.	:	

ORDER

AND NOW, this 21st day of November, 2002, upon consideration of the Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 filed by Arthur D'Amario, III (Document No. 1, filed May 2, 2002), the Report and Recommendation of United States Magistrate Judge Arnold C. Rapoport dated September 30, 2002, the Motion of Arthur D'Amario, III, to Dismiss (Document No. 9, filed September 30, 2002, and Document No. 11, filed October 2, 2002),¹ respondents not having filed an answer to the Motion to Dismiss, and the Report and Recommendation of United States Magistrate Judge Arnold C. Rapoport not having mentioned the Motion to Dismiss,² and the Court concluding that the Motion to Dismiss filed by Arthur D'Amario, III, should be granted, **IT IS ORDERED** as follows:

1. The Report and Recommendation of United States Magistrate Judge Arnold C. Rapoport dated September 30, 2002, is **NOT APPROVED**; and,
2. The Motion of Arthur D'Amario, III, to Dismiss his Habeas Corpus Petition pursuant to Federal Rule of Civil Procedure 41(a)(2) on grounds of mootness is **GRANTED** and the

¹The Motion to Dismiss was docketed twice.

²The Motion to Dismiss and the Report and Recommendation were filed on the same day.

Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 filed by the said petitioner is
DISMISSED AS MOOT.³

BY THE COURT:

JAN E. DUBOIS, J.

³The Court notes from the Motion to Dismiss the Habeas Corpus Petition that it was based on petitioner's statements that (a) the United States Court of Appeals for the Third Circuit has ordered resentencing in petitioner's New Jersey criminal case, (b) on July 12, 2002, the relief sought in the Habeas Corpus Petition was partially granted by Honorable Joseph Irenas of the District Court for New Jersey, and (c) any further reduction of petitioner's criminal history points would not alter petitioner's criminal history category.